



---

**Comptroller General  
of the United States**

Washington, D.C. 20548

---

# Decision

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

**Matter of:** Main Building Maintenance, Inc.

**File:** B-279191.3

**Date:** August 5, 1998

---

Lee Curtis, Esq., William A. Roberts III, Esq., and Douglas Many, Esq., Howrey & Simon, and Garreth E. Shaw, Esq., for the protester.  
Johnathan M. Bailey, Esq., for Astro Quality Services, Inc., an intervenor.  
Marian E. Sullivan, Esq., Department of the Air Force, for the agency.  
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## **DIGEST**

Agency reasonably decided to take corrective action (including reinstating previous protester to the competitive range and reopening discussions with all competitive range offerors) in response to previous protests, where agency concluded during pendency of protests that it could not defend initial protests because discussions with the previous protester were not meaningful and did not afford that firm an opportunity to clarify or revise its proposal to address evaluators' concerns.

---

## **DECISION**

Main Building Maintenance, Inc. (MBM) protests the Air Force's decision to take corrective action in response to two prior protests filed by Astro Quality Services, Inc. (Astro) under request for proposals (RFP) No. F41636-96-R-0047, for base engineering services. MBM had been awarded two contracts pursuant to the RFP. In its prior protests, Astro alleged that the Air Force's discussions with it were inadequate and that the Air Force improperly eliminated Astro's proposal from the competitive range based upon an unreasonable technical evaluation. After reviewing the protests, the Air Force determined that it had not held meaningful discussions with Astro and that its decision to eliminate Astro from the competitive range could not be supported. Agency Report, June 1, 1998, at 2. The Air Force decided to take corrective action, including: reinstating Astro to the competitive range, reopening discussions with all competitive range offerors, receiving and evaluating new best and final offers (BAFO), and making a new award determination. *Id.* MBM contends that the Air Force's decision to take corrective action in response to Astro's prior protests is improper because the agency's

discussions with Astro were adequate and the agency reasonably evaluated Astro's proposal and eliminated it from the competitive range.

We deny the protest.

The RFP solicited proposals for providing labor, equipment, materials, transportation, and services related to base engineering requirements for minor construction/maintenance/repair projects to be performed at Lackland Air Force Base and Wilford Hall Medical Center. RFP § C.3.1. The RFP contemplated award of two 1-year indefinite-delivery, indefinite-quantity contracts (one for Lackland and the other for Wilford Hall), each with options for 4 additional years. RFP §§ B.5.1, M-910; Contracting Officer (CO) Statement, Mar. 5, 1998, at 1. The RFP stated, at § M-901.A, that contracts would be awarded to the offerors whose proposals were determined to be most advantageous after consideration of price and other factors.

Eight offerors submitted initial proposals. After several rounds of discussions, the agency eliminated all but three offerors from the competitive range; Astro was one of the offerors eliminated. Agency Report at 1. After evaluating BAFOs, the Air Force determined that MBM's proposals represented the best overall value and awarded MBM both the Lackland and Wilford Hall contracts. CO Statement at 2; Source Selection Decision at 1; Agency Report at 2. After a debriefing, Astro protested to our Office.<sup>1</sup>

Among other things, Astro alleged that the Air Force did not hold meaningful discussions and incorrectly evaluated its proposal in four areas in which the evaluators perceived deficiencies and upon which the agency based its decision to eliminate Astro from the competitive range. Astro challenged the agency's conclusions that: [deleted]

Our Office scheduled a hearing on Astro's protests and notified the parties that we would hear testimony concerning the four reasons identified by the Air Force for eliminating Astro from the competitive range. Shortly thereafter, the Air Force informed our Office that it intended to take corrective action in response to the protests, reinstating Astro to the competitive range and reopening discussions. Astro withdrew both protests, and we closed our files on April 21. On April 27, MBM filed this protest in our Office, alleging that the Air Force had improperly decided to put Astro back into the competitive range and to reopen discussions with all competitive range offerors.

---

<sup>1</sup>Astro's initial protest (reference No. B-279191), filed on Feb. 5, 1998, was based upon information obtained during the post-award debriefing. After receiving additional information from the Air Force, Astro filed a supplemental protest (reference No. B-279191.2) on Feb. 24.

MBM states that the Air Force's decision to take corrective action was based solely upon the agency's determination that the original evaluation incorrectly concluded that Astro's proposed [deleted] and MBM contends that the competition should not be reopened, because the Air Force's original conclusion that Astro's [deleted] was correct. MBM Protest Letter, May 21, 1998, at 2-3. MBM points out that Astro's [deleted]. Id. at 2. MBM also contends that the Air Force discussions with Astro were adequate since the agency led Astro into the general area of its concern about the [deleted] during discussions. Id. at 3. MBM argues that, even if the agency did not hold adequate discussions and incorrectly evaluated Astro's proposal on [deleted], Astro was not prejudiced, because its proposal was eliminated from the competitive range for the four separate reasons listed above and, therefore, Astro's proposal "would have remained unacceptable and the contracting officer's determination to exclude Astro from the competitive range would have stood unchanged." Id. at 2.

Contracting officials in negotiated procurement have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. We do not believe that an agency must conclude that the protest is certain to be sustained before it may take corrective action; where the agency has reasonable concern that there were errors in the procurement, even if the protest could be denied, we view it as within the agency's discretion to take corrective action. See Network Software Assocs., Inc.--Entitlement to Costs, B-250030.4, Jan. 15, 1993, 93-1 CPD ¶ 46 at 3 (mere fact that agency decides to take corrective action does not establish that a statute or regulation has clearly been violated). Moreover, we will not object to the specific proposed corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. See Sherikon, Inc., B-250152.4, Feb. 22, 1993, 93-1 CPD ¶ 188 at 3.

The Air Force reports that it decided to reopen discussions because, in defending the original protests, it became clear that Astro was never told that its [deleted] was considered [deleted] or that the evaluation team was confused regarding [deleted] and, as a result, the decision to eliminate Astro from the competitive range could not be supported. Agency Report at 4-5. A contracting officer is required to include all proposals that have a reasonable chance of being selected for award in the competitive range and to hold written or oral discussions with all competitive range offerors. Federal Acquisition Regulation (FAR) §§ 15.609(a), 15.610(b) (June 1997). During discussions, the contracting officer is to advise an offeror of any deficiencies in its proposal, to resolve any uncertainties concerning the technical proposal, and to allow the offeror an opportunity to revise its proposal in response to discussions. FAR 15.610(c). Since there were perceived proposal weaknesses which the Air Force had not discussed with Astro, and those weaknesses formed part of the basis for the determination that Astro's proposal did not have a reasonable chance of award, the Air Force's proposed reinstating of Astro to the competitive range and reopening of discussions is reasonable.

We are unpersuaded by the protester's speculative argument that Astro's proposal would have been determined to be unacceptable even without consideration of the agency's concern regarding its [deleted] and the [deleted]. These two issues represented two out of the four weaknesses which, taken together, were identified to the source selection authority as the reason for eliminating Astro's proposal from the competitive range. We have no basis upon which to determine, as the protester suggests, that the contracting officer's decision to exclude Astro's proposal from the competitive range would not have changed if Astro had clarified or revised its proposal in response to discussions on these two concerns. We therefore conclude that the Air Force had a reasonable basis for its concern that Astro may have been prejudiced by the agency's failure to discuss these matters.

MBM also asserts that it will suffer competitive prejudice if the competition is reopened because its prices and subcontracting strategy were revealed to the other offerors after MBM was awarded the contracts. MBM Protest Letter, May 21, 1998, at 3, 6. The Air Force reports that, in an effort to make the reopened competition as fair as possible, it will release the pricing coefficients of each competitive range offeror, including Astro, to all other competitive range offers during reopened discussions. CO Memorandum (undated); Agency Report at 2. We view the risk of an auction as secondary to the need to preserve the integrity of the competitive procurement system through appropriate corrective action. Power Dynatec Corp., B-236896, Dec. 6, 1989, 89-2 CPD ¶ 522 at 3; see also The Cowperwood Co., B-274140.2, Dec. 26, 1996, 96-2 CPD ¶ 240 at 2-3. Here, since the agency had legitimate concerns about the conduct of the discussions with Astro, reopening of discussions is appropriate corrective action.

The protest is denied.

Comptroller General  
of the United States